IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1002 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KATHADABHAI KADVABHAI DAMOR

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Appellant

MR KG SHETH, APP for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE J.R.VORA

Date of decision: 31/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.R. VORA)

1. This appeal is preferred by the appellant through jail being aggrieved by and dissatisfied with the judgement and order dated 20th July 1995, delivered by Additional Sessions Judge, Panchmahals, Camp at Dahod. By the impugned judgement, the present appellant, who was the original accused in Sessions Case No.129/93 in the Court of Sessions Judge at Panchmahals, was convicted for the charges levelled against him under section 302 of IPC and was sentenced to life imprisonment as well as fine of Rs.500/-, in default to undergo further rigorous imprisonment of two months. Though the appellant was found guilty for the charges levelled against him under section 504 of IPC, the learned Additional Sessions Judge did not impose any separate sentence for the said offence. Learned Additional Sessions Judge acquitted the present appellant for the charge under section 135 of the Bombay Police Act.

2. The prosecution case as revealed from the record denotes that the incident in question occurred on 4th February 1993 at 17 hours at village Chosala, Taluka Dahod. It is the prosecution case that the complainant Jithriben (PW2) resided at village Chosala along with her sons Rumal, Shoban and Suraj and daughter Jenab. She was a widow and her relative i.e. distant cousin - elder brother of her deceased husband and also a distant maternal uncle Chhagan Havsinh also resided with her family. Chhagan Havsinh is the deceased in the incident. Wife of Chhagan Havsinh had died 8 years prior to the incident. Out of his children, one son named Lala was staying with him, while a son and a daughter were staying at Baroda. Deceased Chhagan Havsinh had an agricultural land and had constructed a hut in the agricultural land of the present appellant. On this issue there was a dispute between the present appellant and the deceased. In view of this dispute Chhagan Havsinh and his son started staying with the complainant Jithriben in her house, though Chhagan and his son had an arrangement to cook their meals separately outside the house of Jithriben. On the day of the incident i.e. on 4th February 1993 at about 17 hours the appellant armed with a shotgun came to the house of Jitriben and inquired about Chhagan Havsinh. The complainant Jithriben replied that Chhagan had gone to his field. The appellant thereupon told the complainant as to why Chhagan Havsinh was not removing the hut constructed in his agricultural land. However, when the appellant found that Chhagan was not present in the house of Jithriben, he left the place. At that juncture Chhagan Havsinh and his son Lala were

returning to the village after grazing their cattle. On apprehending that some quarrel might take place, Jithriben along with her son Rumal and sister-in-law Savita went after the appellant. The appellant and Chhagan met on the road and the appellant abused Chhagan and inquired from him as to why he was not removing the hut from the agricultural land of the appellant. While saying so, the appellant inflicted a blow by butt of the shot-gun on the head and on the chest of the deceased. Chhagan Havsinh had fallen down on the earth and in the meanwhile the complainant Jithriben, her sister-in-law Savitaben and her son Rumal reached there.The shotgun broke and some pieces of it had fallen on the floor. The accused appellant ran away from the scene of offence with the remaining part of the shotgun. An attempt was made by the complainant and others to give some water to Chhaganbhai, but he could not drink the water as he had died. Thereafter the complainant went to Patel of the Falia Tita Lanja and Tita Lanja visited the scene of offence and saw that Chhagan had suffered injuries and died there. Sarpanch of the village Harji Malan was informed and he had also visited the scene of offence and found that Chhagan had died. On the next day i.e. 5th February 1993 a complaint came to be lodged by Jithriben before Dahod Taluka Police Station at about 7.30 in the morning.

3. Investigation was carried out by Narendrasinh Rajput, the then PSI of Dahod Police Station and a chargesheet came to be filed against the appellant in the Court of Judicial Magistrate (First Class) at Dahold, who committed the case to the Court of Sessions, Panchmahals at Godhra.

4. The charge was framed against the accused-appellant vide Exh.2 by Additional Sessions Judge, Panchmahals, Camp at Dahold for the offences under section 302 and 504 of IPC and under section 135 of the Bombay Police Act to which present appellant pleaded not guilty.

5. The prosecution examined in all 12 witnesses and produced documentary evidence to support the prosecution case. After recording the statement of the appellant under section 313 of the Criminal Procedure Code and after hearing the prosecution and appreciating the evidence as well, the learned Additional Sessions Judge, vide impugned judgement convicted the accused for the offence under section 302 and 504 of IPC and sentenced him as aforesaid.

6. We have gone through the record carefully and have scanned the oral as well as documentary evidence on record. Dr. Babulal Badriprashad Mittal was examined by the prosecution as PW1 at Exh.5 who had conducted the postmortem of the dead body of Chhagan Havsinh on 5th February 1993 between 16 and 17 hours. He found two external injuries - one above left eye and the other on the left side of the neck. Both these injuries were abrasions. According to the doctor, the serious injury was an internal injury, corresponding to external injury no.1. This internal injury was found to be a two inch long fracture on left frontal bone which in turn caused hemorrhage in the brain. He therefore opined that this injury was sufficient in the ordinary course of nature to cause death. The doctor also opined that the cause of death was hemorrhage in the brain due to fracture injuries on left frontal bone. Nothing could be said by the defence so far as this evidence of the doctor is concerned. Therefore it is established that the death of Chhagan Hausinh was homicidal death.

7. Out of the 12 witnesses examined by the prosecution, an important eye witness is a son of the deceased who was present at the scene of offence. The prosecution case as has been disclosed, the deceased and his son were returning to their village after grazing their cattle and the appellant accosted them on the road after he inquired about the deceased from the complainant Jithriben. He was also carrying a shotgun in his hand. Witness Lala Chhagan was examined by the prosecution as witness no.5 at Exh.15. At the relevant point of time he was aged about 11 years. After ascertaining properly the trial court thought it fit not to administer oath to this minor witness because he was not able to understand the sanctity of the oath. Therefore, he was examined by the prosecution without administering oath to him. However, the evidence of this witness cannot be considered to be ineffective only because he being a minor and oath was not administered to him. His evidence, therefore, must be considered and be appreciated in a manner in which the evidence of any other witness be appreciated. In his evidence he has specifically stated that at the time of incident at about 5 O' clock in the evening he along his father was returning home along the road and at that time the accused came from the direction of the house of complainant Jithriben. When the appellant reached near his father, he started beating his father with the butt of the shotgun which he was carrying. This witness has stated that at that time he was just behind his father. The accused had run away from the scene of offence after commission of the offence. This witness confirmed that

complainant Jithriben, Savita, Shoban, etc. came to the scene of offence and found his father lying dead. The evidence of this witness Lalabhai is corroborated by the evidence of complainant Jithriben (PW2-Exh.10). Jithriben though did not fully claim to be the eye witness, she stated that immediately after the incident she reached at the place along with Savitaben and Shoban. Jithriben supported the prosecution version that before the incident took place the appellant visited the house of Jithriben and inquired about the appellant. At that time the appellant was in a drunken condition, he was carrying a shot-gun with him and had repeatedly banged the butt of the gun on her door at that point of time. This witness has further stated that she heard shouts from witness Lala and reached the spot immediately and inquired from Lala who conveyed that his father was beaten by the appellant. The evidence of Lala (PW2) was further corroborated by the evidence of witness Titiyabhai (Exh.16). Jithriben informed Titabhai, who being a Falia Patel about the incident and immediately he rushed to the scene of offence and found that Chhagan Havsinh was lying dead and a broken piece of the butt of shotgun was also found lying on the ground. Titabhai is also a panch of Panchnama of scene of offence which is at Exh.13. In all respects, this witness supports this panchnama Exh.13 along with other Panch PW3 Harjibhai Malabhai. It is established that PW5 Lala was present at the scene of offence when the appellant inflicted blows by butt of the shotgun to Chhagan Hausinh. On hearing the shouts of Lalabhai, Jithriben and others reached at the scene of offence. The broken portion of the butt of the shotgun found at the scene of offence was seized during investigation.

8. The trial Judge rightly discarded the contention of the defence that on the day of the incident the accused was not present at the scene of offence. This contention was based on the cross-examination of witness Savitaben who is examined as PW10 at Exh.24. In her cross-examination this witness admitted that in her statement before the police she did not state that on hearing the shouts from Lala, Jithriben and Rumal went towards the scene of offence. An attempt was made on behalf of the defence to suggest that since Savitaben admitted in her deposition that she did not state before the police that witness Lala had shouted to the extent that his father was killed by the appellant, the story of prosecution cannot be believed. The trial court rightly rejected this contention because the evidence of Lala finds support from the evidence of Jithriben, and Titabhai. This fact is further supported by the evidence

of PW8 Rumal Bachhubhai, son of complainant Jithriben who was minor at the time of deposition. He confirms in his deposition that at about 6 O' clock on the day of the incident when he was ploughing his field, the witness Lala came to him and informed him that his father was killed by the appellant.

9. It was also attempted by the defence to point out that there was a long standing dispute between the appellant and the deceased, and therefore there were all possibilities that the appellant might have been falsely involved in this case by the witnesses. It was also contended in the trial court that there is no other eye witness except minor Lala on whom no reliance can be placed. A contention was also raised to draw the attention of the trial court certain contradictions in the evidence of the witnesses.

10. The Trial Judge rightly rejected all the above contentions of the defence. There is no major contradiction between the evidence of the witnesses as to the fact that while deceased and witness Lala were returning after grazing their cattle, the incident had occurred, in which the appellant beat the deceased by the butt of his shot-gun. As mentioned above, the evidence of eye-witness Lala is not uncorroborated. Though all the witnesses are relatives of the deceased, that itself is not a reason to discard the evidence of such witnesses whose evidence, on scrutiny is found to be unimpeachable and creditworthy. The relatives of the deceased would never involve a wrong person and let the real culprit to escape. There is not a single cogent reason advanced on behalf of the defence that the evidence of Lalbhai and supporting witnesses could not be believed. The evidence and prosecution story is further corroborated by the fact that a portion of the but of shotgun, which is the weapon used in the crime, is found from the scene of offence, while the remaining part of the same gun with the broken butt was found from the house of the accused. Although both the Panchas PW4 Pujabhai Chhatrabhai and PW11 Ramsing Gajabhai of discovery panchnama Exh.30 have not supported the Panchnama, but the investigating officer has amply proved the said Panchnama, and the remaining part of the shotgun, recovered from the scene of offence was sent to forensic science laboratory for the opinion whether the said part forms part of the same gun or that whether all the parts belong to the same gun. In the opinion of the forensic science laboratory (Exh.26) it is clearly found that Exh. A, B, C and D - four parts of the shotgun i.e one recovered from the from the scene of offence and other three from the house of the appellant

were parts of the same 12 bore shotgun bearing No.19383. When we appreciated all this evidence along with the evidence of eye-witness, we find that the prosecution was able to establish the charge under section 302 and 504 of IPC against the present appellant.

11. In view of the above facts and circumstances, we do not find any reason to interfere with the impugned judgement. In the result, this appeal stands dismissed.

[Y.B. BHATT J.]

[J.R. VORA J.]

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